

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2016.03
COMPLAINT INVESTIGATOR:	Connie Rahe
DATE OF COMPLAINT:	March 21, 2003
DATE OF REPORT:	April 17, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	June 26, 2003

**COMPLAINT ISSUES:**

Whether the Jay School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to provide a laptop computer.

511 IAC 7-27-9(b) by failing to make non-academic and extracurricular activities available to the student with a disability, specifically, participation in the after-school wrestling club and school events at the football field.

28 CFR 35.150(a) with regard to the school's alleged failure to provide the student with wheelchair access to the upstairs portion of the school's gymnasium and to the bleachers at the school football field.

In the course of this investigation, it was determined that the following two issues do not apply to the Student's current school setting. The Complainant withdrew the issues, with the option of filing them the subsequent school year if they remain areas of concern:

511 IAC 7-27-9(b) by failing to make non-academic and extracurricular activities available to the student with a disability, specifically, participation in the after-school wrestling club and school events at the football field.

28 CFR 35.150(a) with regard to the school's alleged failure to provide the student with wheelchair access to the upstairs portion of the school's gymnasium and to the bleachers at the school football field.

**FINDINGS OF FACT:**

1. The Student is fourteen years old, attends the local middle school (the School), and qualifies for special education and related services under the category of visual impairment (VI) and hearing impairment (HI).
2. The IEP was written May 14, 2002, at the end of the Student's previous school year, and initiated August 19, 2002, at the beginning of the current school year. The IEP states in the CCC notes, "...portable notetakers will be explored for (the Student's) use for the next school year." No dates were inserted in the IEP to determine which would be the "next school year." The CCC addressed the issue of a notetaker or laptop computer at the meeting on April 7, 2003, and have agreed to purchase a laptop.

## **CONCLUSIONS:**

1. Finding of Fact #2 indicates that the Student's current IEP was written in such a way that it could not be determined whether the use of a laptop notetaker was to be provided or just explored prior to or during the 2002 to 2003 school year. Where an ambiguity exists in an IEP, the ambiguity will be construed against the public agency that is responsible for its development and implementation. IEPs and CCC reports must have sufficient clarity so that both the parents and school personnel understand what services a student is to receive. Therefore, a violation of 511 IAC 7-27-7(a) is found for failing to implement the student's IEP as written with regard to the question of whether and to what extent exploration of a portable notetaker was to take place in the 2002 to 2003 school year.

## **CORRECTIVE ACTION:**

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above:**

The Jay School Corporation shall:

1. Send a written reminder to case conference coordinators that where an ambiguity exists in an IEP, the ambiguity will be construed against the public agency that is responsible for its development and implementation. A copy of the written memorandum and a list of personnel to whom the memorandum was sent shall be submitted to the Division no later than May 9, 2003.
2. Send an assurance statement to the Division by May 9, 2003, stating that the School will abide by CCC agreement of April 7, 2003, to provide a laptop computer for the student's use during the summer and the 2003 to 2004 school year.